

SUPREME COURT OF ARKANSAS

No. CR10-1309

GREGORY CHRISTOPHER DECAY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 2, 2013

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT,
[NO. CR07-999-1]HONORABLE WILLIAM A. STOREY,
JUDGEREVERSED AND REMANDED.**JIM HANNAH, Chief Justice**

Appellant Gregory Christopher Decay was convicted by a Washington County jury of two counts of capital murder and sentenced to death. This court affirmed in *Decay v. State*, 2009 Ark. 566, 352 S.W.3d 319. Decay subsequently filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.5. The circuit court denied the petition, and this appeal followed. Having reviewed the circuit court's order denying Decay's petition, we conclude that the circuit court failed to make specific written findings of fact and conclusions of law as required under Rule 37.5(i). Accordingly, we reverse and remand to the circuit court for entry of a written order in compliance with Rule 37.5(i) and this court's holding in *Echols v. State*, 344 Ark. 513, 42 S.W.3d 467 (2001).

Rule 37.5 sets out the postconviction procedures for death-penalty cases. *Fudge v. State*, 354 Ark. 148, 151, 120 S.W.3d 600, 601–02 (2003). Subsection (i) provides in part that the circuit court shall “make specific written findings of fact with respect to each factual issue

raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition.” In *Echols*, 344 Ark. at 519, 42 S.W.3d at 470, this court held that this provision imposes a “more exacting duty” on the circuit court than that found in Arkansas Rule of Criminal Procedure 37.3(c), which provides postconviction procedures for non-death-penalty cases. Under Rule 37.5(i), it is the petitioner who determines the issues that must be addressed by the circuit court in a written order, while Rule 37.3(c) provides that the circuit court is to determine the issues and then make specific written findings of fact and conclusions of law with respect to those issues. *Id.*, 42 S.W.3d at 470.

Here, we must reverse and remand because the circuit court’s order did not comply with Rule 37.5(i). On remand, however, the circuit court shall make factual findings and legal conclusions as to only those issues raised on appeal, as all other claims raised below but not argued on appeal are considered abandoned. *Id.*, 42 S.W.3d at 471.¹ To avoid lengthy delay, we direct the circuit court to complete the order within sixty days from the date the mandate is issued.

Reversed and remanded.

William A. McLean, for appellant.

Dustin McDaniel, Att’y Gen., by: *LeaAnn J. Adams* and *Laura Shue*, Ass’t Att’ys Gen., for appellee.

¹In his petition for postconviction relief, Decay raised twenty-one separate bases for ineffective assistance of counsel. On appeal, however, he focuses on four issues: (1) that he was denied effective assistance of counsel when his trial counsel failed to investigate, develop, and present mitigation evidence during his trial; (2) that he was denied effective assistance of counsel when his trial counsel failed to properly object to the prosecuting attorney’s comment on Decay’s failure to testify; (3) that he was denied effective assistance of counsel when his trial counsel failed to properly object to the prosecuting attorney’s statement to the jury that Decay may become eligible for release if sentenced to life imprisonment without parole; and (4) that he was denied effective assistance of counsel when his trial counsel failed to advance the defense that Decay did not commit the act that resulted in the deaths of the victims.